

REMARKS/ARGUMENTS

This reply is intended as a full and complete response to the Office Action mailed on June 19, 2006. Claims 1-15, 19-29, and 37-54 are currently pending in the application. Claims 1-15, 19-29, and 37-54 stand rejected. No claims are amended. Based upon the arguments that follow, the Applicants submit all claims are now in condition for allowance.

REJECTION UNDER 35 U.S.C. §103

The Examiner has rejected claims 1, 7, 19, 20, 22, 25, 28, 37-42 and 49-54 under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,760,312 (hereinafter “Hitzeman”) in further view of U.S. Patent No. 6,404,864 (hereinafter “Evslin”). The Applicants respectfully traverse the rejection.

The Examiner correctly noted on pages 3 and 4 of the Office Action that Evslin has a common assignee with the instant application. The Applicants submit the Evslin reference is disqualified under 35 U.S.C. §103(c) as prior art in a rejection under 35 U.S.C. §103(a). “In order to be disqualified as prior art under 35 U.S.C. §103(c), the subject matter which would otherwise be prior art to the claimed invention and the claimed invention must be commonly owned, or subject to an obligation of assignment to a same person, at the time the claimed invention was made” MPEP 706.02(l)(2). The Applicants note that Evslin was assigned to ITXC Corp., and the inventors (Applicants) of the present invention were obligated to assign their invention to ITXC Corp. at the time the invention was made. Therefore, Evslin is not available as a reference for a rejection under 35 U.S.C. §103(a). Because Evslin is not available as a reference under U.S.C. §103(a), the obviousness rejection must fail. Therefore, the

Applicants submit claims 1, 7, 19, 20, 22, 25, 28, 37-42 and 49-54 are allowable and request the rejection be withdrawn.

The Examiner has rejected claim 12 under 35 U.S.C. §103(a) as obvious over U.S. Patent No. 6,801,523 (hereinafter “Osman”) in view of U.S. Patent No. 4,905,273 (hereinafter “Gordon”) and in further view of Evslin. The Applicants respectfully traverse the rejection.

Claim 12 recites inter alia:

and to select, for each specific long distance call to be transmitted over the packet switching network, one from plural of originating gateways each being capable of conveying said each specific call to said packet switching network after a dialed number associated with said specific call is examined.

The Examiner concedes that Osman in view of Gordon does not specifically teach selecting one from plural of the originating gateways, and cites Evslin for teaching this limitation of claim 12. As discussed above, Evslin is not available as a 103(a) reference. The combination of Osman and Gordon does not result in the Applicants’ invention as claimed. Therefore, the Applicants submit claim 12 is allowable. Claims 13-15 depend, directly or indirectly, from claim 12 and recite additional limitations therefor. Because claim 12 is allowable, claims 13-15 are also allowable. The Applicants respectfully request the rejection to claims 12-15 be withdrawn.

The remaining claims in the application, claims 21, 23, 24, 26, 27, 29 and 46-48 are rejected under 35 U.S.C. §103(a) over various combinations of Hitzeman, Evslin, U.S. Patent No. 6,134,315 (“Galvin”), U.S. Patent No. 6,584,110 (“Mizuta”), Osman and Gordon. Each of the combinations requires Evslin as a reference to result in the Applicants invention as claimed. As discussed above, Evslin is not available as a reference for a rejection under 35 U.S.C. §103(a), and the obviousness rejections must fail. Therefore, the Applicants submit claims 21, 23, 24, 26, 27, 29 and 46-48 are allowable. The Applicants respectfully request the rejection to claims 21, 23, 24, 26, 27, 29 and 46-48 be withdrawn.

CONCLUSION

Applicants respectfully request reconsideration and allowance in view of the above remarks and amendments. The Examiner is authorized to deduct additional fees believed due from our Deposit Account No. 11-0223.

Respectfully submitted,

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Dated: October 18, 2006

s/ Jeffrey I. Kaplan
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